The Examiner stated that the election of Group A, B, or C is subject to further restriction to a single sub-Group of A-I through A-XIII, B-I through B-XIII, or C-I through C-XIII, respectively. The Examiner further required the election of a single species. The Examiner has alleged that the Groups lack the same or corresponding technical feature, and thus lack unity of invention. The Examiner acknowledges that Groups A – C each relate to sPLA2 inhibitors, but somehow lack unity in view of a number of documents that allegedly disclose sPLA2 inhibitors of formulae I – XXIII. For the reasons that follow, Applicants respectfully traverse the restriction requirement.

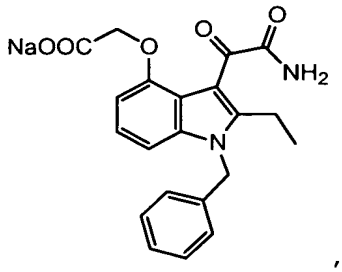
The restriction requirement is improper because the special technical feature relating each group of claims to the other is the sPLA2 inhibition activity exhibited by compounds of formulae I – XXIII, not the compounds of formulae I – XXIII. The Examiner plainly admits that sPLA2 inhibition activity relates to all aspects of the claimed invention, but nevertheless sees fit to finely divide the claims into no less than 39 sub-Groups on the basis that "the claimed compounds represented by formula (I)-(XXIII) are known in the art . . ." Office Action at page 3. Applicants courteously point out that they are not claiming compounds, but rather compositions and methods of using the compositions that all flow from the discovery that the compounds are sPLA2 inhibitors. Thus, it is sPLA2 inhibition, not compounds of formulae I – XXIII, which is the inventive concept linking the alleged groups of inventions.

The Examiner relies upon PCT Rule 13.1 in applying the "unity of invention" standard, which in this case requires the Examiner to examine all of the present claims in concert. "An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories . . . (2) A product and process of use of said product . . ." 37 C. F. R. § 1.475. Indeed, the Examiner is specifically guided in this context by at least one example proffered by the PCT:

> Claim 1: Use of a family of compounds X as insecticides.
>
> Claim 2: Compound X_1 belonging to family X.
>
> Provided X_1 has the insecticidal activity and the special technical feature in claim 1 is the insecticidal use, unity is present.

Administrative Instructions under the PCT, Annex B, Part 2, Example 4. Here, sPLA2 inhibitors correspond to "family X" and compounds of formula I – XXIII belong to the family of sPLA2 inhibitors. The present claims also provide for methods of using sPLA2 inhibitors in the prevention and treatment of ischaemic reperfusion injury. It is clear, as the Examiner acknowledges, that sPLA2 inhibition is the special technical feature that is common to all of the present claims. "Unity of invention has to be considered in the first place *only in relation to the independent claims* in an international application and not the dependent claims." Administrative Instructions under the PCT, Annex B, Part 1(c) (emphasis added). Furthermore, "[I]f the independent claims avoid the prior art and satisfy the requirement of unity of invention, *no problem of lack of unity arises in respect of any claims that depend on the independent claims*. In particular, *it does not matter if a dependent claim itself contains a further invention*." Administrative Instructions under the PCT, Annex B, Part 1(c)(i) (emphasis added). In contrast, the Examiner has focused solely on the present dependent claims that recite particular chemical formulae, and has thereby apparently disregarded the special technical feature which relates each of the independent claims, namely sPLA2 inhibition activity of compounds of formulae I – XXIII. Therefore, the restriction requirement is improper.

For at least the reasons set forth above, Applicants courteously submit that all of the claims should be examined simultaneously and request the Examiner to consider the same. Additionally, applicants cannot agree with the Examiner that the claimed species lack unity of invention for the same reasons. Without acquiescing to the Examiner's characterization of the claims, without prejudice to Applicants' right to pursue the non-elected claims in one or more divisional applications, and in order to be fully responsive to the Office Action, Applicants provisionally elect Group B-I, claims 41, 48, 59, and 104, together with claims 35 – 40, 42 – 47, 49, 57, and 101 to the extent that the latter claims read on the elected Group. Applicants identify the following as the elected species:



which is named [[3-(2-amino-1,2-dioxoethyl)-2-ethyl-1-(phenylmethyl)-1H-indole-4-yl]oxy]acetic acid sodium salt. Claims 35 – 49, 57, 59, 101, and 104 read on this species.

Respectfully submitted,

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By _____

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